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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,253	05/09/2001	Mathew McPherson	M55.2-9888	4066

490 7590 07/05/2002

VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER
HSIEH, SHIH YUNG

ART UNIT	PAPER NUMBER
2837	

DATE MAILED: 07/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/852,253	McPherson
Examiner	**Art Unit**
Shih-yung Hsieh	2837

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on _____.

2a) ☐ This action is **FINAL.** 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-27 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-27 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 7
4) ☐ Interview Summary (PTO-413) Paper No(s). _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 4-6, 9-27 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17-20, and 25-37 of copending Application No. 09/567,145. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications are claiming a two layer soundboard of a guitar.

3. Claims 4-6, 9-19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,060,650. Although the conflicting claims are not identical, they are not patentably distinct from each other because these claims in the application 09/567,145 had been addressed in the 11/15/2000 office action.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Petek (2,674,912).

Regarding claim 1, Petek discloses a guitar (col. 1, lines 30-31) having a body (Fig. 1) having a soundboard comprising a first layer (10) and a second layer (12) both layers being bonded together (col. 2, line 32), wherein the first and second layers are made of different types of wood (col. 1, lines 10-11 and col. 2, lines 10-20).

Regarding claim 3, Petek discloses a third layer (11) bonded to the second layer, wherein the third layer is made of different type of wood than that of the second layer.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 2, 7-8, 20-21, and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petek in view of Sloane (Steel-String Guitar construction, E. P. Dutton & Co. Inc. New York, 1975, pp19).

Regarding claim 2, Petek discloses the claimed invention except the type of wood to make the first and second layers being chosen from the group consisting of spruces, ceders, furs, pines, redwood, maple, koa, mahogany, berch and popple.

Sloane teaches using spruce, maple, and mahogany and other wood (pp19) for a laminated wood guitar soundboard for improving the performance of the guitar. It would have been obvious to one having ordinary skill in the art to modify Petek's soundboard as taught by Sloane to use the type of wood being chosen from the group consisting of spruce and maple for the purpose of improving the performance of the guitar.

Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use different wood material, since it has been held to be within the general skill of a worker in the art to select a known wood material on the basis of its suitability for the

intended use for the purpose of improving the performance of the guitar. In re Leshin, 125 USPQ 416.

Regarding claims 7 and 8, see statement above.

Regarding claims 20-21, and 23-25, see above statement.

8. Claims 22, and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petek in view of Sloane as applied to claims 1, 20, 21, 24, and 25 above, and further in view of Oehrlein (168,665).

Petek in view of Sloane disclose the claimed invention except that the two layers of wood are in substantially parallel planes and running in substantially perpendicular direction.

Oehrlein teaches a guitar construction with wood layers in substantially parallel planes and running in substantially perpendicular direction (Fig. 1) for great strength. It would have been obvious to one having ordinary skill in the art to modify Petek I view of Sloane's soundboard as taught by Oehrlein to include a soundboard with two layers of wood in substantially parallel planes and running in substantially perpendicular direction for the purpose of great strength.

9. Any inquiry concerning this communication should be directed to (David) S.Y. Hsieh at telephone number (703) 308-1031.

SHIH-YUNG HSIEH
PRIMARY EXAMINER